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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

GC Docket No. 97-113

In the Matter of

Electronic Filing of  
Documents in Rulemaking  
Proceedings

COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules and the Notice Of Proposed Rulemaking ("NPRM") released April 7, 1997,<sup>1</sup> AT&T Corp. ("AT&T") hereby submits its comments concerning the Commission's proposal to permit parties to file comments electronically in informal notice and comment rulemaking proceedings.

AT&T supports the Commission's efforts to streamline its processes and to make rulemaking proceedings more readily accessible to the public, and agrees that electronic filing potentially can further both of these aims. However, as the NPRM recognizes, there are a host of technological and procedural issues that must be resolved in order to ensure the continued smooth operation of rulemaking proceedings. Electronic filing cannot be precisely analogized to traditional paper filings -- the Commission will be

<sup>1</sup> Notice of Proposed Rulemaking, Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, FCC 97-113, released April 7, 1997 ("NPRM").

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required to develop a new body of procedures to cover as yet unanticipated situations. In addition, although the Internet has developed at an astonishingly rapid pace, it remains a new technology, and significant technical hurdles remain before electronic filing can be deemed a routine matter.

In light of the unprecedented level of activity engendered by the Telecommunications Act of 1996, it is critical that implementation of an electronic comment filing system avoid creating bottlenecks that hinder parties' access to information, or give rise to distracting wrangling over procedural matters. Accordingly, AT&T recommends that the Commission revisit the rules that it adopts in this proceeding after a six-month trial, to determine whether they are workable and practical.

Filing Procedures. AT&T concurs with the NPRM's proposal (§ 12) that parties should be required to submit only one "copy" of electronically filed comments, which could then readily be distributed by the Commission's staff to the appropriate Commission personnel. AT&T also agrees that a World Wide Web (WWW) interface would be the most easily administered and accessible mechanism for submission of electronic comments (§ 14).

The Commission's current "Quick Start" ("QS") WWW interface appears to be a workable model for both filing and retrieving comments electronically, although AT&T has not yet used it to file comments. In particular, one of QS's strengths is its ability to accept comments in various formats, including popular word processing programs and ASCII text. However, AT&T has two concerns about QS: First, although the interface is designed to accommodate comments created using various programs, it can only be accessed using the latest version of a single web browser, Netscape 3.0.

Although Netscape is currently the most popular browser software, many users instead use other programs. Requiring commenters to purchase a particular piece of software in order to file comments electronically largely defeats one of the cardinal virtues of the Internet -- the ability of users all over the world to share information without regard to the hardware or software they employ. For this reason, AT&T recommends that, at minimum, the QS interface be redesigned to support both Netscape and Microsoft's Internet Explorer, the two most popular browsers.

Second, QS's search functions will not function properly unless both commenters and the Commission's staff correctly enter information identifying the documents in that system. If a commenter inadvertently enters an incorrect docket number or misspells a key word, then its filings might not be retrieved by another party's QS search.<sup>2</sup> If QS is to become a reliable tool for keeping track of filings in rulemaking proceedings, the Commission must ensure that the documents in it are indexed correctly by reviewing and correcting identifying information entered by commenters and others.<sup>3</sup>

As the NPRM recognizes (§ 15), although the Internet continues to grow exponentially, many Americans still do not have access to it. In addition, computerized filing and record keeping for rulemaking proceedings remains new and untested.

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<sup>2</sup> In fact, even the very limited number of comments currently retrievable via QS contain a number of typographical errors in their indexing information. For example, filings in WT Docket No. 96-198 are indexed under the title "Access to Telecommunications Equipments [sic] for disable [sic] persons."

<sup>3</sup> See NPRM, § 14, n.17 ("FCC staff ... still would likely be required to verify that information provided is accurate, especially with respect to fields such as the docket number of the proceeding.").

Accordingly, AT&T supports the Commission's plan to continue to make all filings available in hard-copy form through its copy contractor (§§ 14-15). In order to avoid disadvantaging parties that lack access to the WWW, the Commission's copy contractor should make paper copies of all electronically-filed documents available in a timely fashion -- no later than the morning of the day following their filing -- and should include a record of all electronic filings in its index for the relevant proceedings. Further, the Commission itself should maintain paper copies of all filings, including those submitted electronically, and only these paper versions should constitute the official rulemaking record.

Authentication of electronically filed documents. AT&T believes that the Commission has not adequately considered the risk of fraudulent or frivolous electronic filings. The NPRM observes simply that "the risk of such filings appears to be no greater than with paper comments" (§16). However, it is far easier to instantaneously transmit a document from almost anywhere in the world, without paying postage or arranging for another means of delivery, than to file paper comments with the Commission. In addition, the QS interface requires users to invest only a few moments in order to submit comments, and permits them to do so under any assumed identity they choose. Because of the ease with which comments -- including brief messages of just a few sentences -- can be submitted using QS, it is readily foreseeable that anyone with access to a personal computer and a modem could submit bogus filings in the name of another individual, or a telephone or cable company, broadcaster, state or federal agency, or other entity.

AT&T suggests that the Commission monitor its experience in this regard during a six-month trial, and after that time consider whether it should require measures to authenticate the identity of all commenters. Prior to that review, the Commission could

take steps immediately to reduce the possibility of fraudulent pleadings by establishing procedures to permit parties that expect routinely to participate in future rulemaking proceedings to apply for a password that they can use to identify their electronic filings. This password would be a required field in the QS interface for any subsequent submission by that party, and would permit the Commission readily to determine whether a filing was fraudulent.<sup>4</sup>

Determining filing date and time. The NPRM proposes that the filing date and time for comments submitted electronically should be the date that a document is received by the Commission (§18). AT&T concurs with this approach, which comports with the practice established for paper filings. However, although the transit time for documents submitted electronically should ordinarily be quite short, the Commission should consider that its WWW server may be unable to handle the high volume of traffic that it could receive near the close of a business day in which one or more major pleadings were due to be filed. Users of the FCC's Web site are well aware that it can be difficult to access that site on the day a major decision is released. Electronic filing will only increase usage, as parties seek both to file their own comments and to download pleadings and ex

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<sup>4</sup> Although the NPRM suggests that it should simply be "up to the commenters" to identify fraudulent filings (§16), it would be unreasonable to expect parties constantly to review electronic filings in order to detect fraudulent submissions, particularly given that the NPRM proposes to permit electronic filing not only of comments and reply comments, but also of *ex parte* submissions (§19). Thus, in order to detect a filing fraudulently made in its name, a commenter would be required to review QS daily in every open docket. Further, it likely would pose a greater administrative burden on the Commission to resolve claims regarding fraudulent filings than simply to establish a voluntary password procedure for entities that routinely participate in rulemakings.

*parte* submissions filed by other commenters. If electronic filing proves sufficiently popular, then the QS interface could become a bottleneck that prevents commenters from making timely filings. In addition, because the Internet is still in its infancy, the Commission should take into account the fact that the WWW is not 100% reliable. There may be periods when users are unable to submit comments because their own systems are down or their Internet Service Provider cannot provide an Internet connection; there are also likely to be instances when the FCC's Web server is unavailable.

In order to promote the use of electronic filing despite these potential problems, the Commission should be prepared to grant requests for limited extensions of time to file when a party has made a good faith effort to file electronically, but has been unable to do so for technical reasons. Such leeway will be especially important as parties familiarize themselves with electronic filing procedures -- commenters should not be penalized for attempting to participate in the Commission's new venture. The Commission also should monitor this issue during a six-month trial, and should then seek comments as to the time required to transmit pleadings via the Internet and any problems commenters experienced during the trial period in trying to do so in a timely manner.

Status of electronically filed comments. AT&T supports the NPRM's suggestion that comments "received before the applicable deadline that meet the necessary formalities will be treated as formal filings" (§ 18), provided that such comments also are available in hard-copy from the Commission's copy contractor promptly after they are filed. The Commission also proposed to permit the filing of informal or *ex parte*

comments until the time that a proceeding is terminated. AT&T does not oppose this proposal, so long as paper copies of all such submissions will also be promptly available.<sup>5</sup>

Service of documents. AT&T agrees with the NPRM's proposal that when service of documents is required, a party must be served with paper copies unless it has agreed to accept electronic service. Agreement to electronic service could be indicated by so stating in the signature block of a pleading, and by giving an e-mail address there in addition to a full mailing address and telephone number.

It is not clear, however, that electronic service will be practicable. Commenters use a variety of software packages and computer platforms, and may be unable to read electronically-served documents unless the Commission specifies a particular file format (which would require parties to purchase a particular program or programs, and possibly to use certain operating systems or hardware). Also, parties without access to the Internet may be unable to serve documents electronically. For this reason, the Commission should make clear that electronic service is optional for the serving party, even if the served party agreed to accept service in that fashion.

Because of the ease with which comments can be filed through QS, the Commission should consider that the number of comments it receives could increase

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<sup>5</sup> The Commission should consider, however, that permitting "informal" electronic filings will significantly increase the demand for access to QS, as each party to a given proceeding will need to check daily to determine if new documents have been filed there. Such high usage could make it difficult for users to access QS. In contrast, if that system were available only for filing comments, replies and formal pleadings on reconsideration, parties could simply check the status of a proceeding at a few discrete points in time and retrieve documents due on those dates.

significantly with the advent of electronic filing. For example, the Commission received thousands of e-mail messages in the context of its access charge reform NPRM considering whether to impose access fees on Internet Service Providers. If even a fraction of that volume of comments were filed in future rulemaking proceedings, it would be unreasonably burdensome to require a party filing reply comments to serve a copy of its reply by mail on every party that filed initial comments.<sup>6</sup> To avoid imposing this burden on commenters, AT&T suggests the Commission amend its rules to provide that a party is not required to serve commenters that file electronically if the filing that would otherwise be subject to a service requirement is available in electronic form on the Commission's WWW site. Publication on the FCC's web site could be accomplished either by the commenting party filing electronically or submitting its pleading on diskette so that the Commission's staff could load it onto the FCC site.<sup>7</sup> Parties that file electronically can be presumed to have access to the Internet, and therefore to be able to obtain documents using that medium.

Page limits and citation forms. The NPRM also seeks comment on how the Commission should enforce page limits for electronically filed comments (§ 22). Limiting the size of electronic files would not be appropriate, as graphic files, charts, and

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<sup>6</sup> Electronic service of reply comments could reduce this burden somewhat, but not all parties can or will use that method because they lack access to the Internet, their reply comments include attachments not available in electronic form, or commenting parties have not agreed to accept electronic service.

<sup>7</sup> Alternatively, the Commission could require service on parties filing electronically only when they affirmatively request it in their initial comments or other pleadings.

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other elements frequently are larger than files containing only text, but would not run afoul of page limits if filed in paper form. At the same time, translating files from one program or platform to another -- or even printing on different printers -- can significantly change a document's pagination, as the NPRM recognizes (§ 22). This problem can be resolved by requiring parties filing electronically to certify under penalty of perjury, using a form provided by the Commission, that the document they are submitting complies with any applicable page limits when formatted in accordance with the Commission's rules and printed using the computer system on which it was created. The Commission could investigate, on its own initiative or pursuant to a motion to strike, instances of obvious abuse of page limits or formatting requirements.

Finally, the NPRM observes that because the pagination of electronically filed pleadings can vary radically, it will not suffice simply to cite to the page numbers of such filings when referring to them in other documents. To overcome this problem, the Commission should require parties filing electronically to number the paragraphs in each such document sequentially. Both internal references within the document and citations to it in other documents would cite to paragraph numbers, rather than (or in addition to) page numbers.<sup>8</sup>

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Many commenters simply will have no interest in receiving the large volume of documents that can be generated in a rulemaking proceeding.

<sup>8</sup> In addition, the Commission should require that paragraph numbers be entered as actual characters, not as automatically updated "fields," because such automatic numbering often is lost in translation from one file type to another.

## CONCLUSION

AT&T supports the Commission's electronic filing initiative, but believes many technical and procedural issues must be resolved before electronic filing can be implemented on more than a trial basis. However, these outstanding issues cannot be fully addressed in the abstract, but instead should be explored through real-world testing. In order to gather more information about electronic filing and to more thoroughly test its WWW interface, the Commission should permit parties to file pleadings electronically in informal rulemaking proceedings, and should revisit its electronic filing procedures, and again accept public comment on them, after six months of such testing.

Respectfully submitted,

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